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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/800,150

03/05/2001

Yuji Nomura

FUJY 17.297

4621

26304

7590

03/16/2005

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EXAMINER

NGUYEN, BRIAN D

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/800,150	NOMURA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian D Nguyen	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on the application filed on 3/5/01.
- 2a)  This action is FINAL.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-9 11-18 20-23 is/are rejected.
- 7)  Claim(s) 10 and 19 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 05 March 2001 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 21-23 are objected to because of the following informalities:

Claim 21, line 3, "the user request" seems to refer back to "requests" in line 10 of claim

20. If this is true, it is suggested to change "requests" in claim 20 to --user requests--.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3, line 4, "**at least one** of the ingress node" is unclear because only one ingress node described in line 6 of claim 1.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-9, 11-18, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata (2001/0016914) in view of McAllister et al (6,697,329).

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Regarding claim 1, Tabata discloses a label switch network system having a plurality of label switch nodes (see figure 1) interconnected by network links where layer 2 paths are set up by specified routes between the plurality of label switch nodes from a network ingress to a network egress (see figure 5), comprising: an ingress node which is disposed at the ingress the label switch network that transfers packets corresponding to packet flows based on labels; a policy server (see 7 of figure 1) that creating the transfer control information to be supplied to edge nodes (ingress/egress node) and backbone nodes and controls the ingress node and the plurality of label switch nodes (see paragraphs 0010, 0026, 0044, 0046, 0068, 0073, 0077, 0080). Tabata does not explicitly disclose the ingress node select and set up the layer 2 paths in compliance with policy control protocols when at least one of a user makes a request or a status change in the network arises. However, McAllister discloses these limitations (see figure 2A, col. 7, lines 6-22, col. 7, line 50-col. 8, line 19). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to select and setup the network paths as taught by McAllister in the system of Tabata to reroute packets to other paths when the main path fails.

Regarding claims 2-7, Tabata discloses the policy server creates the transfer control information to be supplied to the nodes in the network wherein the routing of packets through the network is based on quality of service parameters (see paragraphs 0021, 0022, 0026, 0044, 0046). Tabata does not specifically disclose whether to select existing paths or setup new paths. However, McAllister discloses a system and a method to either to select an existing path (alternate path) or setup a new path (see col. 7, line 50-col. 13, line 33). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the

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technique of setting up the paths as taught by McAllister in the system of Tabata to route the packets through another path when the main path is failed in order to maintain the communication.

Regarding claim 8, Tabata discloses the use of quality of service in which bandwidth is assigned to a user based on the user's contract. Tabata does not specifically disclose working path and spare path. However, McAllister discloses these limitations (see col. 7, line 50-col. 13, line 33). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the technique of setting up the paths as taught by McAllister in the system of Tabata to route the packets through another path when the main path is failed in order to maintain the communication.

Regarding claim 9, Tabata in view of McAllister does not specifically disclose stop the other traffic from using the spare path and to make the spare path accommodate traffic which the working path was carrying when a failure arises in the working path. However, it is obvious that when routing data packets through the network based on quality of service, lower priority resources will be preempted to provide the resources to a higher priority service. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preempt the low priority resources in order to provide and guarantee quality of service for higher priority service.

Regarding claims 11-18, claims 11-18 are apparatus claims that have substantially the same limitations as claims 1-9. Therefore, they are subject to the same rejection.

Regarding claims 20-23, claims 20-23 are method claims that have substantially the same limitations as the apparatus claims 1-7. Therefore, they are subject to the same rejection.

*Allowable Subject Matter*

6. Claims 10 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

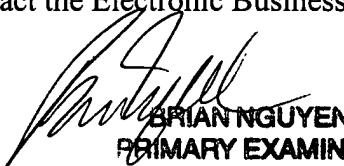
*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mizutani et al (2002/0126633), Iwata (6,026,077), Ma et al (6,775,280), Kanada (2001/0039576), Roy (6,081,513).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 3/8/05  
BRIAN NGUYEN  
PRIMARY EXAMINER